IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Crl.Rev.Pet.No. 393 of 1997()

CRL.A.50/1995 of ADDL. SESSIONS COURT, THRISSUR
ST.1924/1994 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

REVN. PETITIONER - APPELLANT - ACCUSED:

K.X. THANKU, KALLINGAL HOUSE,
P.O. PUDUKAD, THRISSUR DISTRICT.

BY ADV. SRI.T.O.XAVIER

RESPONDENTS - RESPONDENTS - COMPLAINANT & STATE:

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1. JOSE, S/O.JACOB, THEKKUMPEEDIKA HOUSE,
KONIKKARA DESOM, MUKUNDAPURAM TALUK.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI C.K. SURESH R2
BY ADVOCATE SHRI K.A. SATHEESA BABU R1

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 393 OF 1997

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Dated this the 31st day of January, 2007

O R D E R

Accused in S.T. No.1924 of 1994 on the file of the Judicial First Class Magistrate, No.I, Thrissur is the revision petitioner. Revision Petitioner was found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.5,000/-. In default of payment of fine, petitioner was directed to undergo simple imprisonment for a further period of 45 days. Challenging the said conviction and sentence, revision petitioner filed Crl. Appeal No.50 of 1995 before the Sessions Court, Thrissur. Learned Sessions Judge concurred with the findings of the learned Magistrate and dismissed the appeal. Hence this Criminal Revision Petition.

2. Learned counsel for the petitioner strenuously argued before me that there is no legal or acceptable evidence to hold that revision petitioner committed offence alleged against him.

3. First respondent filed a complaint alleging that

revision petitioner borrowed an amount of Rs.45,000/- from him on 20.12.1992 and that when he demanded repayment of the amount, Exhibit P1 cheque was issued in discharge of that legally recoverable debt. It was further averred that when the cheque was presented for collection, the same was dishonoured and returned for want of sufficient funds in the account maintained by revision petitioner with the Bank. Notice was issued informing dishonour of the amount covered by the cheque. Petitioner sent reply but did not repay the amount.

4. The fact that petitioner issued Exhibit P1 cheque was not disputed. The further fact that when the same was presented for collection, it was dishonoured and returned for want of sufficient funds in the account maintained by the petitioner with the Bank was also not disputed. The stand taken by revision petitioner was that she did not borrow any amount from the complainant and he is a total stranger to her. Her case was that she issued Exhibit P1 cheque to one Smt.Annie and after obtaining the cheque her whereabouts are not known and misusing the said cheque the complaint was filed.

5. When petitioner appeared before the learned Magistrate, copies of relevant documents were furnished to her. Particulars of the offence were read over and explained to her. He understood the same and pleaded not guilty. On the side of prosecution P.Ws.1 to 3 were examined and Exhibits P1 to P9 proved and marked. After prosecution evidence was over, petitioner was questioned under Section 313 Criminal Procedure Code. She denied all incriminating circumstances brought out against her and examined D.W.1 on her side. Learned Magistrate, accepting the evidence of the complainant, found the petitioner guilty, convicted and sentenced her as aforesaid.

6. Learned counsel appearing for the petitioner argued that sentence imposed is highly excessive. It was argued that courts below did not consider the fact that petitioner is a lady and sentence imposed is disproportionate to the amount due under the cheque.

7. Both the courts concurrently rejected the evidence let in by the accused and accepted the version of the complainant. Evidence also shows that complaint was filed after observing all

formalities. It was found that Exhibit P1 cheque was issued by the revision petitioner and when the same was presented for collection, it was dishonoured and returned. Notice of dishonour was intimated to the petitioner. Petitioner sent reply but did not repay the amount. So findings of the courts below that petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act is correct and does not call for any interference. I confirm the same. Conviction is also confirmed.

8. However, considering the entire facts and circumstances of the case, I am of the view that the substantive sentence imposed on the petitioner in this case can be modified and reduced to imprisonment till rising of the court. At the same time petition shall pay Rs. 45,000/- as compensation and in default of payment of the same shall undergo simple imprisonment for one month. Petitioner will be given three months' time to appear before the Magistrate for receiving the sentence and also to pay the compensation ordered.

In the result, Criminal Revision Petition is disposed of in the following manner: Findings of the courts below that the revision

petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act is confirmed. Conviction is also confirmed. Sentence imposed is modified. Substantive sentence of imprisonment for three months is modified and reduced to imprisonment till rising of the court. Fine imposed is set aside. Petitioner is directed to pay a sum of Rs.45,000/- as compensation to the complainant under Section 357(3) Cr.P.C. In case of default of payment of compensation, petitioner shall undergo simple imprisonment for one month. Petitioner is given three months' time from today to pay the compensation ordered and to receive the sentence imposed. If the petitioner commits default in complying the with the above conditions, Magistrate can execute the sentence imposed after the expiry of three months from today.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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O R D E R

31ST JANUARY, 2007